

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, March 7, 2000 Rockville, Md.

The County Council for Montgomery County, Maryland convened in Legislative Session in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 10:05 A.M. on Tuesday, March 7, 2000.

PRESENT

Michael L. Subin, President

Phil Andrews

Nancy H. Dacek

Betty Ann Krahne

Blair G. Ewing, Vice President

Isiah Leggett

Marilyn J. Praisner

Steven A. Silverman

ABSENT

Derick Berlage

The President in the Chair.

SUBJECT: Approval of Legislative Journal

ACTION: Approved the legislative journals of February 8 and 15, 2000, as amended.

The journals were approved by motion of Councilmember Praisner, without objection, Councilmember Berlage absent.

INTRODUCTION OF BILLS

SUBJECT: Bill 8-00. Streets and Roads – Ground Cover in Public Rights-of-Way

Councilmember Ewing, a sponsor of the legislation, stated that the bill would allow property owners to place alternative, conservation-promoting plants or other ground cover on their property in the public right-of-way. At present, residents are not allowed to grow anything in these strips of property except turf grass despite the lack of existing legislation or regulations concerning this matter. Mr. Ewing expressed the view that the bill represents a good environmental proposal.

Councilmember Praisner stated that she is sympathetic with the concerns that led to the legislation, but questions whether there are broader issues that need to be addressed such as how the right-of-way is defined and the possibility of addressing the issue through regulation rather than legislation. Ms. Praisner expressed the hope that the Council will examine this issue from a broader perspective rather than attempting to enact legislation for uses in rights-of-way.

Councilmember Dacek said that there are issues that need to be addressed such as the penalty for not applying the appropriate ground cover to rights-of-way and identifying the agency that would be responsible for enforcing the legislation. Ms. Dacek stated that she could not support the legislation as it is currently written.

President Subin said that if Councilmembers have questions concerning the bill, they should present them to the Council committee that will review the legislation.

ACTION: Introduced Draft 4 of the bill sponsored by Councilmembers Ewing and Krahnke.

SUBJECT: Bill 26-99. Collective Bargaining Amendments

Councilmember Andrews, lead Councilmember for Personnel, presented the report of the Management and Fiscal Policy (MFP) Committee, in accordance with the information contained in the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000. He said that the Committee majority recommended against enactment of the bill and that the Committee majority indicated that if the Council enacts the bill the Committee amendments would offer a reasonable approach. Mr. Andrews said that he did not support the Committee's recommendation.

With respect to the type of binding arbitration, Councilmember Andrews stated that the Committee is recommending a two package approach, last best offer approach in which the arbitrator would review an economic package and a non-economic package and select the more reasonable of each. He said that in Committee, he voted against this approach, preferring instead the original "hybrid" approach: the economic issues would be decided on a last best offer total package basis. The arbitrator would decide which issues are economic and which are non-economic, could decide each non-economic item separately, and would not be bound by the parties' offers.

Councilmember Andrews moved, duly seconded, a substitute motion to amend the bill to substitute the last best offer total package approach for the two-package approach recommended by the Committee majority. He distributed to the Council a written amendment in this regard.

Councilmember Praisner discussed the Committee's review of the bill and explained the Committee majority's rationale for recommending "a two-package, last best offer approach," if the bill is enacted. She said that the majority of the Committee was concerned that without a separation of fiscal and non-fiscal issues, there would not be adequate consideration of the non-compensation issues as the arbitrators tended to focus on that one item. Furthermore the MCGEO bargaining unit, unlike police and fire, incorporated many different functions and positions which also argued for different consideration. She said that in Committee, Councilmember Andrews continued to support the hybrid approach, as originally proposed.

Councilmember Dacek commented on issues related to the types of binding arbitration, expressed concern about binding arbitration in general, and stated that she does not support the bill.

ACTION: Amended the bill to make the technical amendments recommended by Council Staff and incorporate Councilmember Andrews' amendment concerning the type of binding arbitration.

The amendments were approved by motion of Councilmember Andrews:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman

NAYS: Dacek, Praisner, Krahne

ABSENT: Berlage.

Adopted the following amendments as reflected in the bill:

AN ACT to:

- (1) modify certain functions of the Labor Relations Administrator;
- (2) revise the process for certifying employee organizations;
- (3) revise the timetable for certain collective bargaining actions;
- (4) require binding arbitration of certain collective bargaining agreements; and
- (5) generally amend the law governing collective bargaining for certain County employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

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Underlining

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Double underlining

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* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

33-103. Labor Relations Administrator.

- (a) [There is established the position of] A Labor Relations Administrator[, to provide for the effective implementation and administration of] must be appointed to effectively administer this Article [concerning] as it governs selection, certification and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The [Labor Relations] Administrator [shall exercise the following powers and perform the following duties and functions] must:

* * *

- (8) Determine any issue regarding the negotiability of any collective bargaining proposal.

- [(8)] (9) Exercise any other powers and perform any other duties and functions [as may be] specified in this Article.

33-106. Selection, certification, and decertification procedures.

- (a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

* * *

- (5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b)

* * *

- (8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

33-108. Bargaining, impasse, [[fact-finding,]] and legislative procedures.

- (a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February [[15]] 1. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]
- (b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one year or for more than 3 years. All agreements [become effective] take effect July 1 and end June 30.

- (c) A collective bargaining agreement [~~becomes effective~~] takes effect only after ratification by the employer and [by] the certified representative. The certified representative may [~~provide~~] adopt its own [rules for] ratification procedures.
- (d) Before November 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator [shall] must appoint a mediator/[fact-finder] arbitrator, who may be a person recommended [to her] by both parties. The mediator/[fact-finder] arbitrator [shall] must be available [during the period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.
- (e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/[fact-finder] arbitrator, or the parties may jointly request [his] those services before [declaration of] an impasse is declared. If the parties do not reach an agreement by [January] February [[15]] 1, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.
- (2) [[This]] Any dispute, except a dispute involving the negotiability of a bargaining proposal, [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together

voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

- (3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February [[15]] 1 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

- [(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

- (f)(1) If binding arbitration is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. [[The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include only salary and wages (including wage premiums or differentials, allowances, merit increments, and amounts allocated for cash awards), pension and other [[welfare]] retirement benefits, and employee benefits such as [[health]] insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.]]

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and arguments in support of their proposals. [He] The mediator/arbitrator may hold a hearing for this purpose at a time, date, and place selected by [him] the mediator/arbitrator. This hearing [shall] must not be open to the public.

[(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a report of his findings of fact and recommendations on those matters still in dispute between the parties. The report shall be submitted to the parties but shall not be made public at this time.]

On or before [[March 1]] February 15, the mediator/arbitrator must select, as a whole, the more reasonable of [[(A)] the final [[economic]] offers submitted by the parties[[. and (B) the final non-economic offers submitted by the parties]]. [[With regard to the economic offers, the]]
The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on [[economic]] items, integrated with the disputed [[economic]] items, to decide which [[economic]] offer is the most reasonable. [[The mediator/arbitrator must also decide which of each of the parties' non-economic proposals is the most reasonable under all the circumstances.

The mediator/arbitrator may compromise, alter, or reject any non-economic proposal.]]

[(d.)] (4) In making [findings of fact and recommendations] a determination under this subsection. the mediator/[fact-finder] arbitrator may [take into account] consider only the following factors:

[(i)] (A) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions.

[(ii)] (B) Comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland.

[(iii)](C) Comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel.

[(iv)] (D) Wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County.

[(v)] (E) The interest and welfare of the public.

[(vi)] (F) The ability of the employer to finance economic adjustments, and the effect of the adjustments [upon] on the normal standard of public services provided by the employer.

(5) The [[economic [[offer]] and non-economic offers]] offer selected by the mediator/arbitrator. [[together with the mediator/arbitrator's conclusion on each non-economic proposal,]] integrated with all previously agreed on

items, [[is]] [[comprise]] is the final agreement between the employer and the certified representative. need not be ratified by any party, and [[has]] [[have]] has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement. and any provision which requires action in the County budget must be included in the budget which the employer submits to the County Council.

- [(f) After receiving the report of the mediator/fact-finder, the parties shall meet again to bargain. If 10 days after the parties receive the report they have not reached full agreement, or if either party does not accept, in whole or in part, the recommendations of the mediator-fact-finder, the report of the mediator-fact-finder, with recommendations on agreed items deleted, shall be made public by sending it to the Council. The mediator/fact-finder shall also send the Council the joint memorandum of items agreed upon, up-dated with any items later agreed upon. The parties shall also send to the Council separate memoranda stating their positions on matters still in dispute.]
- (g) The [[budget that the]] employer [[submits]] must submit to the Council [shall] [[must include the items that have been agreed to, as well as the employer's position on matters still in dispute. Any agreed or disputed]] any term or condition [[submitted to the Council]] of the collective bargaining agreement that requires an appropriation of funds, or the enactment[, repeal, or modification] or adoption of any County law or regulation, or which has or may have a present or future fiscal impact[[, may be accepted or rejected in whole or in part by the Council]]. [Such terms or conditions shall be identified to the Council by either

or both parties.] The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council [[take action to implement]] approve [any term or condition to which the parties have agreed] all terms of the final agreement that require Council review.

- (h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].
- (i) The Council may accept or reject all or part of any term or condition that requires Council review under subsection (e). On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] [[agreement]] items that require Council review or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] [[item of the final agreement]] such item. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]
- (j) [Then] If the Council indicates its intention to reject any item [[of the final agreement]] that requires Council review, the Council [shall] must designate a representative to meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] [[matters]] items that the Council has indicated its intention to reject. This representative

must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may at this time initiate impasse procedures under this Section. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

- (1) The Council does not take action necessary to implement the agreement, or a part of it; or
- (2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Enacted Bill 26-99, as amended.

The bill was enacted as amended by a roll call vote:

YEAS: Andrews, Leggett, Ewing, Subin, Silverman

NAYS: Dacek, Praisner, Krahne

ABSENT: Berlage.

SUBJECT: Emergency Bill 35-99. Rental Assistance Program

Councilmember Ewing, Chair, Health and Human Services Committee, presented the Committee report on Bill 35-99, in accordance with the memorandum from Senior Legislative Attorney Faden, dated March 7, 2000.

ACTION: Adopted the following amendments as reflected in the bill:

AN EMERGENCY ACT to:

- (1) revise the law governing eligibility for and payment of Rental Assistance Program and Handicapped Rental Assistance Program benefits;
- (2) repeal the Supplemental Rental Assistance program for families with dependent children;
- (3) remove inconsistencies in the law governing the Rental Assistance Program, and make stylistic and technical changes; and
- (4) generally amend the law governing rental assistance programs.

By amending

Montgomery County Code
Chapter 41A, Rental Assistance

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Double underlining

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Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.